

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION NO. 1:13-CV-897**

JAMES DILLON,
on Behalf of Himself and All Others
Similarly Situated,

Plaintiffs,

vs.

BMO HARRIS BANK, N.A.,
FOUR OAKS BANK & TRUST, a
North Carolina-Chartered Bank,
GENERATIONS FEDERAL CREDIT
UNION, and BAY CITIES BANK, a
Florida State-Chartered Bank,

Defendants.

**MEMORANDUM IN SUPPORT OF
FOUR OAKS BANK & TRUST'S
MOTION TO STAY**

Defendants BMO Harris Bank, N.A., Generations Federal Credit Union and Bay Cities Bank, have moved for a stay pending appeal. If the Court grants their motion, as a matter of judicial economy the case should be stayed as to defendant Four Oaks as well.

FACTS

Defendants BMO Harris Bank, N.A., Generations Federal Credit Union, and Bay Cities Bank have appealed to the United States Court of Appeals for the Fourth Circuit from this Court's July 7, 2014, Opinion and Order denying their renewed motions to compel arbitration. (Dkt. No. 130). Shortly thereafter they moved for the case against them to be stayed pending resolution of their appeal. (Dkt. No. 133). Defendant Four

Oaks Bank & Trust (“Four Oaks”) did not file any motion to compel arbitration and therefore has not taken an appeal.

QUESTION PRESENTED

Whether, if the stay requested by the other defendants is granted, the case should also be stayed as to defendant Four Oaks.

ARGUMENT

The Court’s authority to stay proceedings “is incidental to the power inherent in every court to control the disposition of causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. North American Co.*, 299 U.S. 248, 254 (1936); *accord Whiteside v. UAW Local 3520*, 576 F. Supp. 2d 739, 742 (M.D.N.C. 2008).

The Court has already held that the cases against each of the defendants should be kept together. “[F]or pretrial purposes, given the substantial overlap of legal and factual issues, keeping these matters together aids judicial economy.” (Order on Motion to Sever [Dkt. No. 108] at 11.) Plaintiff has taken the same position, arguing to the Court that “severing this case would waste time and resources of the parties and judiciary by forcing the Court to consider the exact same legal issues multiple times.” (Plaintiff’s Memo in Opp. to BMO Harris’ Motion to Sever [Dkt. No. 68] at 1-2.)

Accordingly, if the case is stayed as to the other defendants, it should be stayed as to Four Oaks as well. Allowing the case against Four Oaks to proceed while the case is stayed as to all other defendants would needlessly multiply cost and effort for both the

Court and the parties, particularly if the Court's denial of the other defendants' motions to compel arbitration is affirmed on appeal. For example:

- The Court would have to enter separate scheduling orders, one governing discovery as to Four Oaks and then a later one governing discovery as to the other defendants.
- Any depositions taken during the stay would have to be repeated to give the other defendants the opportunity to cross-examine the witness.
- Any disputes as to the proper scope of discovery would have to be adjudicated twice, because the other defendants would not have had the opportunity to be heard the first time.
- Plaintiffs would have to file at least two separate class certification motions – one as to Four Oaks and then a later motion as to the other defendants – even though many of the legal issues raised by the motions would be identical.

These are only a few examples of the duplication of effort that would be required if the case against Four Oaks were severed from the case against the other defendants during the pendency of the other defendants' appeal.

CONCLUSION

Because of the substantial overlap in legal and factual issues, Four Oaks requests that if the case is stayed as to the other defendants, it be stayed as to Four Oaks also.

Dated: July 31, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on July 31, 2014, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such to the following CM/ECF participants:

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